

Tax Policy Notice: Sales Tax on Outer Burial Containers

On July 29, 2003 the Missouri Supreme Court issued a decision regarding the sale of outer burial containers. In *Buchholz Mortuaries, Inc. v. Director of Revenue* the Court determined that the incidence of tax in such a sale depends on whether title and ownership of the container (e.g. vault) pass before or after the container is affixed to real property.

The department is issuing this Tax Policy Notice to assist taxpayers in complying with the Court's decision. This Notice discusses various scenarios and the tax consequences of each scenario. It is not possible for the department to issue one definitive statement regarding when title and ownership of vaults passes in the funeral industry. The answer to that question is dependent on the specific facts of the individual situation. It is the responsibility of the funeral home and vault company to examine its business practices and determine in which scenario it falls.

The standard used by the Supreme Court is:

The incidence of tax depends on whether title passes before or after the vault is affixed to real property. In other words, whoever owns the vault when it is placed in the ground, owes and pays tax on the vault.

Therefore:

1. If title and ownership of the vault pass to the family before the vault is affixed to real property (buried), tax is owed by the family on its purchase of the vault.
2. If title and ownership of the vault pass to the funeral home before the vault is affixed to real property but to the family after it is affixed to real property, tax is owed by the funeral home on its purchase of the vault.
3. If title and ownership of the vault pass to both the funeral home and the family after the vault becomes affixed to real property, the vault company owes tax on its purchase of materials to manufacture the vault.

Both the vault company and the funeral home should maintain documentation such as contracts and invoices to demonstrate when title and ownership of the vault passes. However, merely stating that title and ownership pass after the vault is affixed to real property does not in and of itself determine when title and ownership pass. The intent of the parties, as evidenced by all relevant facts, is key.

Discussing the above three situations in further detail:

Scenario One

If...

Title and ownership of the vault pass to the family before the vault is affixed to real property (buried).

Then...

The funeral home issues a resale exemption certificate to the vault company.

The funeral home charges tax to the family on its sale of the vault.

The funeral home remits the tax to the Department of Revenue.

Special considerations regarding Scenario One:

- A funeral home structuring its operations in this factual pattern must issue a new (post 7/29/03) resale exemption certificate to its vault supplier in order to notify the vault supplier of its type operation. The funeral home cannot operate under a prior resale exemption certificate issued to its vault supplier. All exemption certificates issued prior to 7/29/03 are considered null and void.
- A funeral home structuring its operations in this fashion should be aware and cognizant of the provisions of Section 144.157.1 RSMo, which establishes penalties for any person that willfully and knowingly overcharges or overcollects sales tax with the intent to later seek a refund of the overcharged or overcollected amount. If a funeral home is seeking a refund of sales tax collected from its customers, the department will presume it is violating Section 144.157.1 if it continues to collect sales tax from its customers.

Scenario Two

If...

Title and ownership of the vault pass to the family after the vault is affixed to real property *and*

Title and ownership of the vault pass to the funeral home on its purchase of the vault before it is affixed to real property.

Then...

The funeral home does not charge tax to the family on its sale of the vault.

The funeral home pays tax to the vault company on its purchase of the vault.

The vault company remits the tax to the Department of Revenue

Scenario Three

If...

Title and ownership of the vault pass to both the family and the funeral home after the vault is affixed to real property.

Then...

The funeral home does not charge tax to the family on its sale of the vault.

The funeral home does not pay tax to the vault company on its purchase of the vault.

The vault company must pay tax to its suppliers on the materials used to manufacture the vault or otherwise self accrue and remit tax to the Department of Revenue on the cost of such materials. The vault company is considered to be a contractor in this scenario.

Special considerations regarding Scenario Three:

If the vault company sells all of its vaults in this manner (i.e. as a contractor) it is not selling vaults at retail and is therefore no longer entitled to the manufacturing sales tax exemptions on any future purchase of machinery and equipment used to manufacture the vault.

If a vault company operates as both a contractor and a retailer (i.e. sells vaults wherein title and ownership transfer before the vault is affixed to real property), the vault company is considered a **dual operator**. As a dual operator the vault company should:

- Purchase its materials used to manufacture vaults tax free under a resale exemption certificate.
- Self accrue and remit tax directly to the Department of Revenue on the cost of materials used to manufacture vaults on transactions where the vault company installs the vault and title and ownership does not transfer until after it is affixed to real property.
- Collect and remit tax on sales of vaults on transactions where title and ownership transfers before the vault is affixed to real property.

- The vault company is entitled to a partial manufacturing sales tax exemption on any future purchase of machinery and equipment used to manufacture vaults sold at retail.